



House of Representatives

File No. 831

General Assembly

January Session, 2015

(Reprint of File No. 359)

Substitute House Bill No. 6498
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 15, 2015

AN ACT CONCERNING EVIDENCE IN SEXUAL ASSAULT CASES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (d) of section 19a-112a of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2015*):

4 (d) Each health care facility in the state which provides for the
5 collection of sexual assault evidence shall follow the protocol as
6 described in subsection (b) of this section and, with the consent of the
7 victim, shall collect sexual assault evidence. [The] After the collection
8 of any evidence, the health care facility shall contact a police
9 department [which] to receive the evidence. Not later than ten days
10 after the collection of the evidence, the police department shall transfer
11 the evidence, [collected pursuant to subsection (b) of this section,] in a
12 manner that maintains the integrity of the evidence, to the Division of
13 Scientific Services within the Department of Emergency Services and
14 Public Protection or the Federal Bureau of Investigation laboratory.
15 [The agency that receives such evidence] If the evidence is transferred

16 to the division, the division shall analyze the evidence not later than
17 sixty days after the collection of the evidence or, if the victim chose to
18 remain anonymous and not report the sexual assault to the police
19 department at the time of collection, shall hold [that] the evidence for
20 [sixty days] at least five years after [such collection, except that, if] the
21 collection of the evidence. If a victim reports the sexual assault to the
22 police [, the evidence shall be analyzed upon request of the police
23 department that transferred the evidence to such agency and held by
24 the agency or police] department after the collection of the evidence,
25 such police department shall notify the division that a report has been
26 filed not later than five days after filing such report and the division
27 shall analyze the evidence not later than sixty days after receiving such
28 notification. The division shall hold any evidence received and
29 analyzed pursuant to this subsection until the conclusion of any
30 criminal proceedings. The failure of a police department to transfer the
31 evidence not later than ten days after the collection of the evidence, or
32 the division to analyze the evidence not later than sixty days after the
33 collection of the evidence or after receiving a notification from a police
34 department, shall not affect the admissibility of the evidence in any
35 suit, action or proceeding if the evidence is otherwise admissible.

36 Sec. 2. Section 54-86f of the general statutes is repealed and the
37 following is substituted in lieu thereof (*Effective October 1, 2015*):

38 (a) In any prosecution for sexual assault under sections 53a-70, 53a-
39 70a and 53a-71 to 53a-73a, inclusive, no evidence of the sexual conduct
40 of the victim may be admissible unless such evidence is (1) offered by
41 the defendant on the issue of whether the defendant was, with respect
42 to the victim, the source of semen, disease, pregnancy or injury, or (2)
43 offered by the defendant on the issue of credibility of the victim,
44 provided the victim has testified on direct examination as to his or her
45 sexual conduct, or (3) any evidence of sexual conduct with the
46 defendant offered by the defendant on the issue of consent by the
47 victim, when consent is raised as a defense by the defendant, or (4)
48 otherwise so relevant and material to a critical issue in the case that
49 excluding it would violate the defendant's constitutional rights. Such

50 evidence shall be admissible only after [a] an in camera hearing on a
51 motion to offer such evidence containing an offer of proof. [On motion
52 of either party the court may order such hearing held in camera,
53 subject to the provisions of section 51-164x.] If the proceeding is a trial
54 with a jury, such hearing shall be held in the absence of the jury. If,
55 after a hearing, the court finds that the evidence meets the
56 requirements of this section and that the probative value of the
57 evidence outweighs its prejudicial effect on the victim, the court may
58 grant the motion. The testimony of the defendant during a hearing on
59 a motion to offer evidence under this section may not be used against
60 the defendant during the trial if such motion is denied, except that
61 such testimony may be admissible to impeach the credibility of the
62 defendant if the defendant elects to testify as part of the defense.

63 (b) Any motion and supporting document filed pursuant to this
64 section shall be filed under seal and may be unsealed only if the court
65 rules the evidence is admissible and the case proceeds to trial. If the
66 court determines that only part of the evidence contained in the
67 motion is admissible, only that portion of the motion and any
68 supporting document pertaining to the admissible portion may be
69 unsealed. The court shall maintain any document remaining under
70 seal for delivery to the Appellate Court in the event of an appeal.

71 (c) The court shall seal each court transcript, recording and record of
72 a proceeding of a hearing held pursuant to this section. The court may
73 unseal a transcript, recording or record only if the court rules the
74 evidence in such transcript, recording or record is admissible and the
75 case proceeds to trial. If the court determines that only part of such
76 evidence is admissible, only the portion of such transcript, record or
77 recording pertaining to the admissible evidence may be unsealed.

78 (d) Evidence described in subsection (a) of this section shall be
79 subject to such other terms and conditions as the court may provide.
80 No defendant, defense counsel or agent of the defendant or defense
81 counsel shall further disclose such evidence disclosed by the state,
82 except to persons employed by defense counsel in connection with the

- 83 investigation or defense of the case or any successor counsel, without
84 the prior approval of the prosecuting authority or the court.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	19a-112a(d)
Sec. 2	<i>October 1, 2015</i>	54-86f

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill establishes deadlines for the submission and testing of sexual assault evidence by police departments and the Department of Emergency Services and Public Protection's Division of Scientific Services. There is no fiscal impact arising from these requirements as the deadlines are consistent with current practice.

The bill also establishes certain procedural requirements for the prosecution of sexual assault cases. These requirements have no fiscal impact.

House "A" strikes the underlying bill and results in the fiscal impact identified above.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 6498 (as amended by House "A")*****AN ACT CONCERNING THE TIMELY TRANSFER AND PROCESSING OF SEXUAL ASSAULT EVIDENCE COLLECTION KITS.****SUMMARY:**

This bill makes various changes affecting evidence in sexual assault cases and establishes deadlines for transferring and processing sexual assault evidence police obtain from health care facilities that collect such evidence.

If an accused seeks to introduce evidence of a victim's sexual conduct in a sexual assault case, the bill requires the hearing on the motion to be held in camera (i.e., in private), rather than allowing the court to grant a motion to hold the hearing in that manner. By law, evidence of a victim's sexual conduct in these cases is admissible only in certain limited circumstances (see BACKGROUND).

The bill requires motions, supporting documents, and related court documents concerning these hearings to be sealed, and unsealed only if the court rules that the evidence is admissible and the case goes to trial.

If the state discloses any such evidence, the bill limits further disclosure of that evidence by defense counsel.

The bill also makes technical changes.

*House Amendment "A" (1) adds the provisions on sexual assault cases; (2) requires sexual assault evidence collected from a person who chooses to remain anonymous to be held for at least five years, instead of 60 days; and (3) sets a five-day deadline for police to notify the

Division of Scientific Services (see BACKGROUND) about a victim who reports a sexual assault to the police after the collection of the evidence.

EFFECTIVE DATE: October 1, 2015

MOTION ON ADMISSIBILITY OF EVIDENCE IN SEXUAL ASSAULT CASES

Under the bill, any motion and supporting documents seeking to admit evidence of a victim's sexual conduct must be filed under seal. These documents may be unsealed only if the court rules that the evidence is admissible and the case proceeds to trial. If the court determines that only part of the evidence is admissible, only the pertinent part of the motion or documents may be unsealed. If the case is appealed, the court must maintain these documents under seal for delivery to the Appellate Court.

The bill sets similar requirements for the court regarding transcripts, records, and recordings of proceedings on these hearings. The court must seal them, and may unseal them only if it rules that the evidence in the document or recording is admissible and the case proceeds to trial. If the court determines that only part of the evidence is admissible, it may unseal only the related portion of the document or recording.

The bill specifically allows courts to set other terms and conditions as to such evidence of a victim's sexual conduct. For evidence disclosed by the state, the bill prohibits the defendant, defense counsel, or agent of the defendant or defense counsel from further disclosing the evidence to anyone except to people employed by the attorney in connection with the case investigation or defense, without the prior approval of the prosecutor or the court. (Presumably this provision does not prohibit disclosure by the attorney to the defendant.)

DEADLINES FOR PROCESSING AND TRANSFERRING SEXUAL ASSAULT EVIDENCE

By law, when a health care facility collects sexual assault evidence, it must “contact” a police department (in effect, provide the evidence to the police department), which must transfer it to the state Division of Scientific Services or Federal Bureau of Investigation (FBI) laboratory. Current law requires the agency that receives the evidence to hold it for 60 days. But if the victim reports the assault to the police, the agency must analyze it at the request of the police department that transferred it, and the police department or agency must hold it until any criminal proceedings end.

The bill adds transfer and processing deadlines for police departments and the division. Specifically, it requires a police department that receives sexual assault evidence from a health care facility to transfer the evidence to the Division of Scientific Services or the FBI within 10 days after the health care facility collects it.

If the evidence is transferred to the division, the bill requires the division to analyze it within 60 days after it is collected, unless the victim chose to remain anonymous and not report the assault to the police at the time the evidence was collected, in which case, the division must hold the evidence for at least five years after the collection. If the victim reports the assault to the police department after the evidence is collected, the department must notify the division of the report not later than five days after the victim files it, and the division must analyze the evidence not later than 60 days after getting the notification. The agency must hold any evidence received and analyzed until the end of any criminal proceedings.

Under the bill, a department’s failure to transfer the evidence or the division’s failure to process it within the deadlines does not affect the admissibility of the evidence in any suit, action, or proceeding if the evidence is otherwise admissible.

BACKGROUND

Evidence of Victim's Sexual Conduct in Sexual Assault Cases

The law limits when evidence of a victim's sexual conduct is admissible in most sexual assault cases. The evidence is admissible only when its value as proof outweighs the prejudicial effect on the victim and:

1. it is evidence of sexual conduct with persons other than the accused which is offered by the accused on the issue of (a) whether the accused was the source of semen, disease, pregnancy, or injury or (b) the victim's credibility, if the victim testified on direct examination about his or her sexual conduct;
2. it is evidence of sexual conduct with the accused, offered by the accused on the issue of the victim's consent, when consent is raised as a defense; or
3. the evidence is otherwise so relevant and material to a central issue that barring its admission would violate the accused's constitutional rights.

The evidence may only be admitted after a hearing on a motion to offer such evidence, containing an offer of proof.

Sexual Assault Kits

By law, the Commission on the Standardization of the Collection of Evidence in Sexual Assault Investigations must design a sexual assault evidence collection kit, which must include instructions on the proper use of the kit, standardized reporting forms, standardized tests to be performed if the victim consents, and standardized receptacles for collecting and preserving the evidence. The commission must provide the kits to all health care facilities in the state that perform evidence collection examinations (CGS § 19a-112a(c)).

Division of Scientific Services

The Division of Scientific Services is within the Department of Emergency Services and Public Protection. It operates three laboratories: a toxicology and controlled substances laboratory, a

forensic science laboratory, and a computer crime and electronics laboratory.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/19/2015)